Supreme Court, U.S.
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In The Supreme Court of the United States

JERRY HART; ANDRE DYER,

Petitioners,

v.

CITY OF LITTLE ROCK,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

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QUESTIONS PRESENTED FOR REVIEW

I. Can the "state created danger" theory be asserted as a viable basis for municipal civil liability under 42 U.S.C. § 1983 consistent with this Court's holding in DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189, 109 S. Ct. 998 (1989)?

II. If the foregoing question is answered in the affirmative, which of the multiple federal circuit courts' different frameworks constitutes the proper standard for determining whether "deliberate indifference" has been demonstrated in a § 1983 case premised on the "state created danger" theory?

PARTIES TO THE PROCEEDINGS

Petitioners are Officer Jerry Hart and Officer Andre Dyer, both City of Little Rock, Arkansas police officers at all times relevant to this case.

Respondent is the City of Little Rock, Arkansas.

CORPORATE DISCLOSURE STATEMENT

Neither Petitioners nor Respondent are publicly held corporations.

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INTRODUCTION

Petitioners, Officers Jerry Hart and Andre Dyer ("Hart and Dyer"), respectfully petition for a writ of certiorari to review the Judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS DELIVERED BELOW

The Opinion of the Eighth Circuit Court of Appeals is reported at Hart v. City of Little Rock, 432 F.3d 801 (8th Cir. 2006), and is reproduced at App.[1] 1a-15a. The Amended And Substituted Order of the District Court denying the City of Little Rock's motion for judgment as a matter of law is unreported but is reproduced at App. 18a-33a. The Eighth Circuit's Order denying Hart & Dyer's Petition For Rehearing By Panel And For Rehearing *En Banc* is also unreported but is reproduced at App. 36a.

GROUNDS UPON WHICH JURISDICTION IS INVOKED

The Eighth Circuit's Judgment was entered on December 22, 2005. A timely Petition For Rehearing By Panel And For Rehearing *En Banc* was denied on February 9, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

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[1] References made throughout this Petition to "App." are to the Appendix.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

As set forth in detail below, the Eighth Circuit Court of Appeals held that the evidence was insufficient to support the jury's verdict finding the City of Little Rock liable for violations of Petitioners' substantive due process rights under 42 U.S.C. § 1983 and the "state created danger" theory of liability. In doing so however, the Eighth Circuit's decision was premised upon an announced standard that departs from that used by multiple federal circuit courts. Petitioners contend that the instant case presents an opportunity for this Court to, for apparently the first time, opine on the very existence or nonexistence of the "state created danger" theory of § 1983 liability, as well as the appropriate intent standard utilized under such theory. The pertinent facts underlying this case are as follows.

A. The District Court Proceeding

This petition ultimately arises out of a civil rights action brought by Hart and Dyer against the City of Little Rock, Arkansas under 42 U.S.C. § 1983 alleging substantive due process violations. App. 20a; 2a. A jury awarded each officer $225,000 and the District Court denied Little Rock's motions for judgment as a matter of law and a new trial. App. 2a. The Eighth Circuit reversed as described below. App. 20a.

Specifically, Hart and Dyer were police officers employed by Little Rock and on May 30, 2001, they arrested Michael Bullock on drug charges. App. 2a. Bullock, who had three other